



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 2, 1998

Mr. Mark E. Dempsey  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR98-0001

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111331.

The City of Garland (the "city") received a request for the most recent version of a report on current lawsuits involving the city. You claim that the requested report, entitled "Report of Pending Litigation," is excepted from disclosure based on the attorney work product and attorney-client privileges.<sup>1</sup> We have considered your arguments against disclosure and have reviewed the report at issue.

We note that the "Report of Pending Litigation" contains information relating to both pending and concluded cases. During the pendency of litigation, work product of an attorney in civil litigation is protected from disclosure by section 552.103(a) of the Government Code. Open Records Decision No. 647 (1996) at 1. Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. To secure the protection of section 552.103(a), a governmental body must demonstrate that the information it seeks to withhold relates to pending or reasonably anticipated litigation. Most of the information in the requested report relates to pending or reasonably anticipated litigation and may be withheld from disclosure under section 552.103(a).<sup>2</sup> We have marked

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<sup>1</sup>You raise these privileges in conjunction with section 552.101 of the Government Code. We note, however, that the attorney-client privilege is properly raised under section 552.107 of the Government Code, and the attorney work product privilege is properly raised under sections 552.103 and 552.111 of the Government Code. See Open Records Decisions Nos. 647 (1996), 574 (1990)

<sup>2</sup>We note that if the opposing parties in the litigation have seen or had access to any of the marked information, there would be no justification for withholding that information from disclosure pursuant to

this information accordingly. We will consider whether the remaining information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code.

Section 552.111 of the Government Code is the proper exception under which to claim the attorney work product privilege once the litigation for which the information was created has concluded. Open Records Decision No. 647 (1996) at 3. A governmental body may withhold attorney work product from disclosure under section 552.111 if it demonstrates that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. Open Records Decision No. 647 (1996) at 6. The first prong of the work product test, which requires a governmental body to show that the information at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and 2) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. *Id.* at 3-4. The second prong of the work product test requires the governmental body to show that the documents at issue tend to reveal the attorney's mental processes, conclusions and legal theories. *Id.* at 4.

The information not protected by section 552.103(a) relates to concluded litigation. You have not shown that this information was created for trial or in anticipation of litigation. We conclude, therefore, that this information is not protected as attorney work product under section 552.111. For the reasons discussed below, we also conclude that this information is not excepted from disclosure under section 552.107 of the Government Code.

Section 552.107(1) of the Government Code protects information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only "privileged information," that is, factual information or requests for legal advice communicated by the client to the attorney and legal advice or opinion rendered by the attorney to the client. Open Records Decision No. 574 (1990) at 5-7. Section 552.107(1) does not, however, protect purely factual information. *Id.* The information not protected by section 552.103(a) does not consist of client confidences or attorney legal advice and opinion. Thus, this information is not excepted from disclosure under section 552.107(1). The information not protected by section 552.103(a) must, therefore, be released.

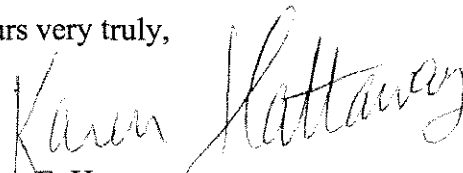
We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

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section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Karen Hattaway".

Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/gle

Ref: ID# 111331

Enclosures: Marked documents

cc: Mr. Charles Ornstein  
The Dallas Morning News  
625 West Centerville Road, Suite 109  
Garland, Texas 75041  
(w/o enclosures)